

Products that qualify as medicines, drugs, or medical appliances are taxed at the reduced sales tax rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

August 7, 2007

Dear Xxxxx:

This letter is in response to your letter dated May 30, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter serves as a request for a sales tax ruling on durable medical products that we are currently qualified to sell in Illinois. All products are sold directly to consumers and usually, although not always, they are sold under a doctor's prescription or pursuant to a Certificate of Medical Necessity. Most of our sales are covered under Medicare or Medicaid. ABC maintains locations in this state, but they are warehouses or administrative offices, not open to the public. Product is delivered to the warehouse and then delivered direct to the consumer via company vehicles. Title transfers at point of delivery to the consumer. All sales leads are generated in STATE. Please address the following items specifically, and also advise if sales tax is based on point of delivery or the warehouse location.

- Electric wheelchairs
- Manual wheelchairs
- Wheelchair repair parts
- Electric scooters
- Wheelchair lifts (attached to vehicles)
- Ramps
- Wheelchair rentals

Enclosed are promotional brochures to aid in your review. Your prompt assistance in addressing these tax issues is appreciated. Please contact me if you require further information.

## **DEPARTMENT'S RESPONSE**

In your letter you provided a list of various items that you feel qualify for exemption from sales tax as medical appliances. Please note that products that qualify as medicines, drugs, or medical appliances are taxed at the reduced sales tax rate of 1% plus applicable local taxes. They are not exempt from tax. See 86 Ill. Adm. Code 130.310. An item qualifies as a medical appliance because of the use to which it is put not because of the nature of the item itself. A medical appliance is an item that corrects a functioning part of the body, such as eyeglasses or hearing aids, or is for use in directly substituting for a malfunctioning part of the body, such as artificial limbs or wheelchairs. (See Section 130.310(c)(2)).

In regard to the electric scooters you sell, the Department's rules include wheelchairs as medical appliances eligible for the lower sales tax rate, which has been interpreted to also include electric wheelchairs and wheelchair repair parts. See 86 Ill. Adm. Code 130.310(c)(2). Generally, the lower sales tax rate is not applicable to power operated vehicles. A determination of whether or not an electric scooter qualifies for the lower rate would depend on specific factual information as to how such item is used and by whom. Such determination cannot be made within the context of a General Information Letter.

Wheelchair ramps and vertical wheelchair lifts do not qualify for the low rate of tax afforded medical appliances. These items do not correct a functioning part of the body and do not directly substitute for a malfunctioning part of the body. While the items are of assistance to those with physical disabilities, they do not fall within the definition of medical appliance. However, there is a provision in the Retailers' Occupation Tax Act that provides for modifications to a motor vehicle for the purpose of rendering it usable by a disabled person to be taxed at the 1% rate. See 35 ILCS 120/2-10. For example, if an individual purchases a motor vehicle and then separately contracts with a conversion company to have a wheelchair lift installed on the vehicle to make it usable by a disabled person, any tangible personal property sold or transferred as part of that modification will be subject to the low 1% rate of tax plus any applicable local tax.

Regarding wheelchair rentals, the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

The rules regarding sales made to Medicare, Medicaid, and other government programs have not changed. Sales made to Medicare and Medicaid are exempt from tax as sales to a government body so long as the exemption is properly documented through provision of an active exemption identification number. See 86 Ill. Adm. Code 130.2080(a). This rule applies to all servicemen. While no tax may be due on payments made directly to vendors by Medicare, Medicaid, or the Illinois Department of Healthcare and Family Services, tax is due upon any portions of bills paid by individuals or private insurance companies not covered by Medicare, Medicaid, or the Illinois Department of Healthcare and Family Services. This means, for example, when Medicare directly pays 80% of the medical bill and the remaining 20% is billed to the patient or his insurance company, assuming proper documentation of the exemption, the 80% is tax exempt as a governmental payment while the 20% is taxable. 86 Ill. Adm. Code 130.2005 and 130.2007.

It is important to note that payments will only be exempt from tax when they are paid **directly** by the government agency. It is not enough that a payment to the vendor is made by a patient or insurance company and reimbursed by the government agency.

For your general information, please see the Department's regulation at 86 Ill. Adm. Code 270.115 for guidance concerning jurisdictional questions. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. 86 Ill. Adm. Code 270.115.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. If purchase order acceptance occurs outside of Illinois and the retailer maintains no inventory in the State, then the tax rate is 6.25%.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk